

REMARKS

Claims 1-5, 7-8, 10, 12 and 14-19 are pending in this application. By this Response, the specification has been amended to correct for a typographical error and claims 1 and 18 have been amended to clarify the claim terminology. In addition, Applicants hereby affirm the provisional election of species made on September 6, 2005 and withdraw from consideration claims 6, 9, 11, 13 and 20. Applicants also hereby reserve the right to reinstate the non-elected claims in the event that a generic claim is held to be allowable.

Claims 1, 2, 10 and 14-16 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2004/0230162 of Tan. At the outset, Applicants note that Tan was published on November 18, 2004 and that the present application was filed on February 26, 2004. Because the publication date of Tan is not more than one year prior to the application date of the present application, the reference does not qualify as a 102(b) reference. Accordingly, Applicants request that the Examiner withdraw the instant rejection.

Common Ownership

To the extent that the Examiner may be considering the use of Tan as a reference under 35 U.S.C. §102(e), Applicants hereby state that Tan and the present application were, at the time the claimed invention of the present application was made, subject to assignment to Scimed Life Systems, Inc. of Maple Grove, Minnesota. Evidence of these assignments has been recorded at reel/frame 014080/0591 and 014667/0928 (Tan) and reel/frame 015026/0389 (present application).

Claims 1-5, 8, 12 and 17-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,726,658 to Hochman in view of U.S. Patent Application Publication No. 2003/0236552 of Roby. Applicants traverse this rejection and assert that Hochman and Roby fail to satisfy a *prima facie* case of obviousness because all of the claimed limitations are not taught or suggested by the references.

With specific regard to claims 1 and 18, neither Hochman nor Roby provide for an antimicrobial agent delivery system in which longitudinal movement of a hub *ejects* an *antimicrobial agent-bearing intervention device* from a delivery system as claimed. For

example, Hochman describes a catheter infusion device in which a *needle 86* is *partially extended* from a front portion of a barrel 12 and retracted back into the barrel 12 after the catheter is inserted into the vein of the patient. First, Applicants point out that the needle 86 of Hochman does not bear an antimicrobial agent. In addition, the needle 86 remains attached to the infusion device after the catheter member 52 is extended, and is therefore not ejected from the barrel 12 (see Hochman FIG. 4). The Examiner acknowledges the failure of Hochman to teach an antimicrobial agent-bearing intervention device and relies upon Roby to cure the deficiencies of Hochman. Applicants point out, however, that Roby is limited to surgical needles that may include iodine and demonstrates no appreciation for the ejection of an antimicrobial agent-bearing intervention device from a delivery tube as claimed. Notwithstanding, claims 1 and 18 have been amended to clarify that longitudinal movement of the hub can detach the intervention device from the delivery system. For at least the above reasons, claims 1 and 18 are patentable over Hochman and Roby. Claims 2-5, 8, 12, 17 and 19 depend from claims 1 and 18, and therefore also recite patentable subject matter. Accordingly, Applicants request that the Examiner withdraw the instant rejection.

Claim 7 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Hochman in view of Roby. Applicants traverse this rejection and assert that Hochman and Roby fail to satisfy a *prima facie* case of obviousness because all of the claimed limitations are not taught or suggested by the references.

In particular, claim 7 depends from allowable claim 1, discussed above and therefore also recites patentable subject matter. Furthermore, neither Hochman nor Roby disclose a longitudinal partition that is a perforation as claimed. The Examiner acknowledges this deficiency and asserts that the claimed perforation “would have been an obvious design choice” (Office Action, p. 5). Applicants point out, however, that the claimed perforation can provide the delivery tube with additional structural rigidity prior to and during use, which may be particularly beneficial given that the claimed delivery system permits the antimicrobial agent-bearing intervention device to be detached from the delivery system. Compare, for example, Applicants’ FIGS. 1A and 1B with Hochman’s FIGS. 6 and 6A in which the slot 26 does not extend all the way to the front end 18 because the needle 86 is never detached from the infusion


device. For at least the above reasons, claim 7 is patentable over Hochman and Roby. Accordingly, Applicants request that the Examiner withdraw the instant rejection.

CONCLUSION

Applicants respectfully submit that all pending claims are in condition for allowance. Favorable consideration and allowance are respectfully requested.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Kenyon & Kenyon Deposit Account No. 11-0600. The Examiner is invited to contact the undersigned at (202) 220-4323 to discuss any matter concerning this application.

Respectfully submitted,



B. Delano Jordan
Reg. No. 43,698

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KENYON & KENYON
1500 K Street, N.W.
Washington, D.C. 20005
Ph.: (202) 220-4200
Fax: (202) 220-4201

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